(3)

No. 91-164

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

THOMPSON/CENTER ARMS COMPANY, A DIVISION OF THE K.W. THOMPSON TOOL COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Respondent manufactures pistols and "conversion kits" that allow the pistols readily to be converted into rifles with 10-inch barrels. Under the National Firearms Act, a manufacturer who "makes" a rifle with a barrel shorter than 16 inches (a short-barrel rifle) must register the firearm in the National Firearms Registry and pay a tax of $200. 26 U.S.C. 5841, 5845(a)(3).

The question presented is whether respondent "makes" a short-barrel rifle by packaging and distributing the pistol together with the conversion kit and is therefore required to register the firearm and pay the tax due under the National Firearms Act.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 924 F.2d 1041. The petition for rehearing and suggestion of rehearing en banc were denied without opinion (Pet. App. 33a, 34a). The opinion of the Claims Court (Pet. App. 18a-32a) is reported at 19 Cl. Ct. 725.

JURISDICTION

The judgment of the court of appeals was entered on January 30, 1991. The order denying the petition for rehearing was entered on March 29, 1991 (Pet. App. 33a). The Chief Justice extended the time for

filing a petition for a writ of certiorari to and including July 27, 1991. The petition was filed on July 26, 1991, and was granted on October 7, 1991. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of Sections 5821, 5841, 5845 and 5861 of the National Firearms Act, as amended, 26 U.S.C. 5821, 5841, 5845, 5861, are set forth at Pet. App. 35a-37a.

STATEMENT

1. The Thompson/Center Arms Company (Thompson) manufactures a single-shot pistol (the "Contender" model) with a receiver that is designed, as a commercially attractive feature, to accept interchangeable barrels of differing lengths and calibers. Thompson also manufactures a "conversion kit" that includes a long barrel and a rifle stock that may be attached to the Contender pistol receiver to convert it into a rifle (Pet. App. 2a).[1] If the shorter, pistol-length barrel is not removed from the receiver when the rifle stock is added, however, the resulting combination is a "short-barrel rifle" that falls within the definition of a "firearm" under Section 5845(a)(3) of the National Firearms Act, 26 U.S.C. 5845(a)(3).[2]

[1] The receiver of the pistol is the metal frame housing the action, trigger and hammer. The rifle shoulder stock is a wooden support that attaches to the rear of the receiver and rests against the shoulder during firing. The rifle forend is a wooden piece that attaches under the barrel and provides a forward handrest to support the rifle during firing (Pet. App. 19a n.1).

[2] The Contender pistol has a 10-inch barrel (Pet. App. 2a). A "rifle" results when the shoulder stock is added to the pistol

The maker of a "firearm," as so defined, is required to pay a tax of $200 for each weapon and register it in the National Firearms Registry. 26 U.S.C. 5821, 5841(b). Moreover, it is a crime punishable by a fine of up to $10,000, or imprisonment for up to ten years, or both, for a person "to receive or possess" a "firearm" if it "is not registered to him" (26 U.S.C. 5861(d), 5871).

The conversion kit manufactured by Thompson is quick, and easy to use.[3] By employing "simple, readily available tools," "a short-barrel rifle could be assembled in less than five minutes—even more easily and readily than a long-barrel rifle—since the barrels would not have to be changed" (Pet. App. 29a).

In 1985, Thompson was advised by the Bureau of Alcohol, Tobacco and Firearms (BATF) that, when the conversion kit was possessed or distributed with the Contender pistol, the unit constituted a firearm subject to the Act (Pet. App. 3a).[4] In response to

receiver, for the weapon in that form is designed "to be fired from the shoulder" (26 U.S.C. 5845(c)). A "rifle" with a barrel less than 16 inches long (commonly referred to as a "short-barrel rifle") is a "firearm" subject to the registration and tax requirements of the National Firearms Act (26 U.S.C. 5845(a)(3)).

[3] Indeed, the process is so simple that, in a demonstration conducted in open court, counsel for respondent was able to alter the pistol into a short-barrel rifle in a matter of a few minutes (Pet. App. 29a).

[4] BATF also informed Thompson, however, that the separate marketing of a *complete* pistol and a *complete* carbine would not by itself fall within the scope of the Act (Pet. App. 3a, 21a). BATF had provided Thompson with this same advice 14 years earlier (in 1971), when Thompson first inquired as to the legality of using the Contender pistol receiver to make a single-shot carbine with a barrel 18 inches long and a full shoulder stock (Pet. App. 2a).

this advice, Thompson submitted an Application to Make and Register a Firearm and paid the applicable $200 tax for the making of a single such firearm (*id.* at 21a). The application sought permission "to make, use, and segregate as a single unit" a package consisting of a serially numbered pistol together with an attachable shoulder stock and a 21-inch barrel.[5] BATF approved the application. Thompson then filed a tax refund claim, asserting that the unit it had registered was not a "firearm" because the component parts of the Contender conversion kit and pistol had not been assembled by Thompson as a short-barrel rifle (Pet. App. 22a).

2. When the refund application was not approved, Thompson commenced this action in the Claims Court.[6] The court held that the Contender pistol, when possessed together with the conversion kit, constitutes a short-barrel rifle and is therefore a "firearm" under the Act (Pet. App. 18a-32a). The court specifically rejected Thompson's argument that the component parts of the pistol and kit must first be assembled as a short-barrel rifle before they could be deemed to be a firearm (*id.* at 29a-30a). The court concluded that both the language of Section 5845 and its legislative history, together with the relevant case law and "ordinary common sense," lead "inexorably to [the] conclusion that the Contender pistol in conjunction with the [conversion kit] is a firearm under the National Firearms Act" (Pet. App. 31a). The court therefore granted summary judgment to the government (*id.* at 32a).

3. The court of appeals reversed. The court concluded that a short-barrel rifle "actually must be assembled" (Pet. App. 4a-5a) in order to be "made" within the meaning of the statute (*id.* at 6a). The court based its conclusion on the statutory description of a short-barrel rifle as one "having" a barrel less than 16 inches in length (26 U.S.C. 5845(a)(3)) and stated that such a "firearm must exist in fact, not in contemplation, to be 'made' within the meaning of the statute" (Pet. App. 5a). The court further noted that other provisions of the Act require registration of any "combination of parts" used to convert an unregulated weapon into a machine gun or other "destructive device" (26 U.S.C. 5845(b) and (f)), but the statute has no similar, specific provision requiring registration of a "combination of parts" for use in converting a weapon into a short-barrel rifle (Pet. App. 7a-8a). The court acknowledged that, in *United States* v. *Drasen*, 845 F.2d 731, cert. denied, 488 U.S. 909 (1988), the Seventh Circuit had "held that complete but unassembled short-barrel rifle parts kits were 'rifles' within the meaning of Section 5845(c)" (Pet. App. 17a). The court concluded,

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[5] See C.A. App. 123. Under the National Firearms Act, a manufacturer must first make application and receive permission from the Treasury Department to make a firearm subject to the requirements of the Act (26 U.S.C. 5822). Thompson elected not to seek qualification as a firearms manufacturer under 26 U.S.C. 5801(a)(1) (which requires payment of an occupational tax of $1,000) and instead sought permission to make firearms as a non-qualified manufacturer under 26 U.S.C. 5821(a) (which requires payment of a $200 tax for each firearm made).

[6] Thompson had previously filed suit in federal district court seeking a declaratory judgment that the Contender pistol and the Contender Carbine Kit did not comprise a "firearm" under the National Firearms Act. *Thompson/Center Arms Co.* v. *Baker*, 686 F. Supp. 38 (D.N.H. 1988). The district court held that it lacked subject matter jurisdiction over Thompson's suit under the Anti-Injunction Act (26 U.S.C. 7421) and the tax exception to the Declaratory Judgment Act (28 U.S.C. 2201). 686 F. Supp. at 44.

however, that, to the extent "that *Drasen* is inconsistent with our decision here, we decline to follow it" (*ibid.*).

SUMMARY OF ARGUMENT

The court of appeals' holding in this case does grave violence to the statutory scheme carefully crafted by Congress. The National Firearms Act draws no distinctions based upon rate of fire, magazine capacity or criminal appeal in imposing registration and tax requirements on concealable weapons such as short-barrel rifles. A rifle is regulated under the Act if it has a short barrel. No more is required for the statute to apply. 26 U.S.C. 5845(a)(3).

The fact that a short-barrel rifle, or any other "firearm," is possessed or sold in a partially unassembled state does not remove it from regulation under the Act. Many ordinary products (including rifles and shotguns) are commonly sold in a partially unassembled state. To say that a product thus produced has not been "made" until it is fully assembled by the purchaser runs contrary to "ordinary common sense" (Pet. App. 31a).

For more than thirty years, the Treasury has consistently ruled that pistols with short barrels that are held in conjunction with a conversion kit that includes a shoulder stock are regulated as short-barrel rifles under the Act. This consistent administrative interpretation of the definitional terms of the Act by the agency responsible for its enforcement is entitled to substantial deference.

In amending statutory provisions that concern different types of firearms, Congress has recognized that "complete kits" for assembling a regulated firearm are subject to regulation under the Act. H.R. Rep.

No. 495, 99th Cong., 2d Sess. 21 (1986). Prior to the decision in this case, the courts of appeals had consistently reached this same conclusion.

The comprehensive statutory scheme that Congress erected would be rendered ineffective if manufacturers were allowed to circumvent the Act by the simple expedient of manufacturing and selling otherwise regulated firearms in a partially unassembled state. The decision in this case thus ignored this Court's admonition that the language of a statute should "not be distorted under the guise of construction, or so limited by construction as to defeat the manifest intent of Congress." *United States* v. *Alpers*, 338 U.S. 680, 681-682 (1950).

ARGUMENT

A PISTOL WITH A BARREL SHORTER THAN 16 INCHES THAT IS PACKAGED FOR DISTRIBUTION TOGETHER WITH A CONVERSION KIT CONTAINING AN ATTACHABLE SHOULDER STOCK IS A REGULATED "FIREARM" UNDER THE NATIONAL FIREARMS ACT

A. The National Firearms Act Regulates All Short Barrel Rifles And Similar Weapons That Are Capable Of Concealment

The National Firearms Act (26 U.S.C. 5801 *et seq.*) was enacted in 1934 to restrict access to certain comprehensively-defined, undesirable classes of weapons. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A395 (1954); *Haynes* v. *United States*, 390 U.S. 85, 87-88 (1968). The Act's restrictions apply to two general types of weapons: (i) concealable rifles, shotguns, and similar weapons; and (ii) exotic and especially lethal weapons. The concealable weapons that are regulated under the Act include short-barrel shot-

guns (with barrels less than 18 inches), short-barrel rifles (with barrels less than 16 inches), and "any other" shotgun, rifle or smooth-bored pistol "capable of being concealed on the person." 26 U.S.C. 5845 (a)(1)-(5) and (e). The exotic and especially lethal weapons that are regulated under the Act include machineguns, silencers, and "destructive devices" such as bombs, grenades, rockets, missiles, mines or similar devices. 26 U.S.C. 5845(a)(6)-(8) and (f). Any weapon that falls within either regulated category is termed a "firearm" under the Act. 26 U.S.C. 5845(a).

All such "firearms" must be registered in a national registry (26 U.S.C. 5841) and every person who manufacturers, transfers, imports or deals in "firearms" is subject to special occupational and excise taxes under the Act (26 U.S.C. 5801, 5802, 5811, 5821). To enforce these broad regulatory provisions, Congress has enacted substantial criminal penalties for possession of unregistered "firearms" and for any other failure to comply with the requirements of the Act. 26 U.S.C. 5871. See p. 3, *supra*.

The narrow issue in this case is whether a Contender pistol with a 10-inch barrel, packaged for distribution together with an attachable shoulder stock and a long barrel, constitutes a "short-barrel" rifle subject to the registration and tax provisions of the Act. Although the court below emphasized that the Contender is not a "gangster-type" weapon (Pet. App. 15a), the fact that the Contender, in its original form, is a single shot target pistol is immaterial. The Act draws no distinctions based on rate of fire, magazine capacity or criminal appeal in imposing registration and tax requirements on concealable weapons. The question whether a short-barrel rifle is used more often for "criminal" than for "sporting"

purposes is not relevant under the Act.[7] A rifle is regulated under the Act if it has a short barrel. No more is required for the statute to apply. 26 U.S.C. 5845(a)(3). Precisely because of the infinite variety with which weapons may be designed, the statutory regulation of concealable weapons necessarily employs broadly inclusive classifications.

Section 5845(a)(3) of the Act thus includes within the definition of a regulated "firearm" *any* "rifle having a barrel or barrels of less than 16 inches in length." 26 U.S.C. 5845(a)(3). A "rifle," in turn, is defined broadly in Section 5845(c) as

> a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

26 U.S.C. 5845(c). The Act requires any person who makes such a weapon to register it (26 U.S.C. 5841(b)), and the term "make" is, in turn, broadly defined in Section 5845(i) to "include":

> manufacturing * * *, putting together, altering, any combination of these, or otherwise producing a firearm.

26 U.S.C. 5845(i). As this Court has observed, in order to accomplish the comprehensive objectives of

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[7] While respondent maintains that the users of the Contender system "are generally law-abiding" (Br. in Opp. 2), respondent ultimately acknowledges that the short-barrel rifle resulting from use of its conversion kit "would have no sporting utility" (*ibid.*).

the statute, "the acts of making and transferring firearms are broadly defined" under the National Firearms Act. *Haynes* v. *United States*, 390 U.S. at 88.

B. Pistols With Short Barrels And Attachable Shoulder Stocks Are Regulated As Short-Barrel Rifles Under The National Firearms Act

1. When the components necessary to assemble a rifle are produced and held in conjunction with one another, a "rifle" is the result. A unit that includes a receiver, a 10-inch barrel, and a shoulder stock is literally a weapon "designed * * * and intended to be fired from the shoulder" with "a barrel or barrels of less than 16 inches in length." 26 U.S.C. 5845(a)(3) and (c). The fact that it may be possessed and sold in a partially unassembled state does not render it any less a "firearm" within the contemplation of the Act. See *United States* v. *Drasen*, 845 F.2d at 737.

By concluding that a firearm is not "made" until it is fully assembled (Pet. App. 4a), the court of appeals failed to follow the plain language and evident meaning of the statute. As the Seventh Circuit concluded in *United States* v. *Drasen*, by placing the registration and tax requirements on persons "manufacturing * * * or otherwise producing a firearm" (26 U.S.C. 5845(i)), the statute applies directly to manufacturers who distribute "a complete parts kit ready to be assembled." 845 F.2d at 737. See also *United States* v. *Woods*, 560 F.2d 660, 665 (5th Cir. 1977) (the statute "does not specify that the parts must be assembled before it applies"), cert. denied, 435 U.S. 906 (1978); *United States* v. *Luce*, 726 F.2d 47, 49 (1st Cir. 1984) ("Congress clearly

intended this common sense interpretation"); *United States* v. *Zeidman*, 444 F.2d 1051, 1053 (7th Cir. 1971) (pistol and attachable shoulder stock found "in different drawers of the same dresser" constitute a short-barrel rifle that is "required to be registered" under the Act). After all, many ordinary products (including rifles and shotguns) are commonly sold in a partially unassembled state, and to say that a product thus produced has not been "made" until it has been fully assembled by the purchaser runs counter to "ordinary common sense" (Pet. App. 31a).[8]

Indeed, to conclude that a manufacturer does not "make" a firearm if the weapon is shipped and sold in a partially unassembled state is as unpersuasive as arguing that a bicycle manufacturer does not "make" a bicycle if it is shipped or sold with the handlebars and seat unattached. See note 8, *supra*. If a firearms manufacturer packages as a unit all of the parts needed readily to assemble a firearm, the manufacturer has "made" a firearm in any ordinary sense of the term. See *United States* v. *Woods*, 560 F.2d at 665 ("to reason otherwise would be to frustrate or defeat the very purpose of the statute"). If the contrary were true, any manufacturer would be able to avoid the tax and registration requirements of the Act by the rudimentary artifice of marketing

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[8] For example, rifles are packaged, shipped and sold with their bolts (and sometimes other parts) detached and could not be fired until fully assembled. Shotguns are manufactured and marketed with removable barrels. But it could hardly be said that gun manufacturers such as Remington Arms, Uzi and Thompson therefore do not "manufacture" guns. That would be like saying that Schwinn does not "manufacture" bicycles.

its products in a "kit" form that requires some assembly by the purchaser.[9]

Accordingly, in both *United States* v. *Lauchli*, 371 F.2d 303, 311-313 (7th Cir. 1966), and *United States* v. *Kokin*, 365 F.2d 595, 596 (3d Cir. 1966), cert. denied, 385 U.S. 987 (1966), the courts held that the transfer of parts from which operative machine guns could be assembled constituted the transfer of machine guns under the Act.[10] Similarly, in *United States* v. *Luce*, 726 F.2d 47, 48-49 (1st Cir. 1984), and *United States* v. *Endicott*, 803 F.2d 506, 508-509 (9th Cir. 1986), the courts held that the unassembled component parts of silencers constituted silencers within the meaning of the Act. As the First Circuit stated in *United States* v. *Luce*, 726 F.2d at 48-49, although the Act "does not expressly define 'silencer' to include component parts of a silencer that are 'readily available [and capable of assembly] with only a brief and minimal effort,' we agree with the district court that Congress clearly intended this common sense interpretation." [11]

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[9] In *United States* v. *Woods*, 560 F.2d at 664, the court specifically rejected the claim that partial disassembly can defeat the obvious breadth of the statute: "The fact that the weapon was in two pieces when found is immaterial considering that only a minimum of effort was required to make it operable." *Ibid.* See also *United States* v. *Zeidman*, 444 F.2d at 1053.

[10] After *Lauchli* and *Kokin* were decided, the definition of "machinegun" was amended by the Gun Control Act of 1968, Pub. L. No. 90-618, § 201, 82 Stat. 1231, specifically to include a "combination of parts" from which a machinegun could be assembled. 26 U.S.C. 5845(b). See pp. 19-23, *infra*.

[11] In 1986, Congress codified the result of *Luce* and *Endicott* by amending the definition of "silencer" to include a "combination of parts" from which a silencer may be assembled in the Firearms Owners' Protection Act, Pub. L. No. 99-308, § 101, 100 Stat. 451. See 26 U.S.C. 5845(a)(7); 18 U.S.C. 921(a)(24). See pp. 24-25, *infra*.

In the present case, the court of appeals attempted to distinguish these decisions on the basis that they "involved unassembled parts that could *only* be assembled as illegal firearms" (Pet. App. 17a).[12] This purported distinction, however, is both factually inaccurate and legally irrelevant. It is factually inaccurate because the M-1 carbine in *Kokin* and the pistol in *Zeidman* were operational, unregulated weapons; they were subject to the Act because they were held in conjunction with components suitable for ready alteration of the weapons to regulated form. See *United States* v. *Zeidman*, 444 F.2d at 1053 (alterable to short-barrel rifle); *United States* v. *Kokin*, 365 F.2d at 596 (alterable to machinegun). See also *United States* v. *Drasen*, 845 F.2d at 732 (manufacturer's parts kit was one that "might or might not be assembled to form a short-barrel rifle"). The asserted distinction is also legally irrelevant because, when a weapon comes within the scope of the "firearm" definition, the fact that it may also have a non-regulated form is not a permissible basis for

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[12] The court of appeals also considered it important (Pet. App. 4a-5a) that Congress could have employed different statutory language—*e.g.*, a rifle that "could have" a short barrel, rather than a rifle "having" a short barrel—if it had intended the Act to embrace rifles sold in a partially unassembled state. Although different statutory language might more clearly embrace unassembled rifles, that hardly demonstrates that Congress did not intend that result here. See *United States* v. *Drasen*, 845 F.2d at 733 (emphasis added):

> The statute *could have* defined a rifle as also including the parts thereof that could be readily assembled to form a functioning weapon. The omission of some clarifying language does not mean, however, that a reasonable interpretation of the statute does not yield the same result.

failing to comply with the registration and tax requirements of the Act. No such exception appears in the statute. See 26 U.S.C. 5841(b), 5845(a).

The comprehensive statutory scheme that Congress sought to erect would be rendered ineffective if manufacturers were allowed to circumvent the Act by the simple expedient of manufacturing and selling otherwise regulated firearms in a partially unassembled state. Requiring criminal prosecutions to depend upon the fortuity of recovering a cache of "fully assembled" weapons would similarly frustrate the important statutory purpose of discouraging trafficking in potentially dangerous firearms. Although the Thompson short-barrel rifle is not likely to be the weapon of choice of common street criminals, the holding in this case (that unassembled rifle parts do not come within the purview of the National Firearms Act) would logically apply equally to an Uzi (see *United States* v. *Combs*, 762 F.2d 1343 (9th Cir. 1985))[13] or other far more dangerous weapons.[14]

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[13] The court of appeals erred in relying (Pet. App. 16a-17a) on *United States* v. *Combs*, *supra*, for the proposition that the weapon must be fully assembled to constitute a "firearm." In that case, the defendant was found in possession of an Uzi carbine that already had a short barrel attached to it. 762 F.2d at 1345. No one has ever questioned that a firearm is "made" if a short barrel is already attached to the rifle. The question presented in this case, which the Ninth Circuit had no need to consider in *Combs*, is whether a pistol possessed together with a conversion kit that enables the pistol to be readily converted into a short-barrel rifle constitutes a "firearm," regardless of whether the parts have actually been assembled in that form.

[14] Respondent suggests that its Contender system is not as powerful as an Uzi and implies that it should therefore be judged by a different standard (Br. in Opp. 6). Respondent acknowledges (*id.* at 6-7 n.4), however, that Uzi makes a

Congress manifestly never intended the "nonsensical" result that only fully assembled weapons come within the purview of the Act. *United States* v. *Drasen*, 845 F.2d at 736.

2. The Treasury has consistently ruled that pistols with short barrels and "attachable" shoulder stocks are subject to regulation as short-barrel rifles under the National Firearms Act. See Rev. Rul. 61-45, 1961-1 C.B. 663; Rev. Rul. 61-203, 1961-2 C.B. 224. These rulings specifically determined that pistols with "conversion kits" similar to the Contender system are regulated under the Act. The rulings have been uniformly applied by the Treasury and have remained in effect at all times since their initial promulgation in 1961. This consistent administrative interpretation of the definitional terms of the Act by the agency responsible for its enforcement should be given substantial deference. See *National Muffler Dealers Ass'n* v. *United States*, 440 U.S. 472, 476-477 (1979); *United States* v. *Correll*, 389 U.S. 299, 307 (1967).[15]

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carbine as well as a machinegun. If Uzi were to manufacture a "conversion" kit" to alter its carbine to a short-barrel rifle, it would be subject to the same regulatory framework as a "conversion kit" made by Thompson or any other manufacturer. Regulation under the National Firearms Act does not distinguish among rifles based upon their caliber or magazine size. The same standards apply to all rifles; they are regulated if they have short barrels. 26 U.S.C. 5845(a)(3).

[15] Deference is afforded to the Treasury's published interpretations of tax statutes because:

> "Congress has delegated to the * * * Commissioner [of Internal Revenue], not to the courts, the task of prescribing 'all needful rules and regulations for the enforce-

Respondent mistakenly asserts (Br. in Opp. 3, 13-18) that the agency has been inconsistent in its application of the statute to the Contender system. Respondent claims to be puzzled by the fact that the agency approved the *separate* marketing of a complete Contender pistol or a complete Contender rifle but determined that the *joint* marketing of the pistol with the conversion kit is subject to regulation. See *id.* at 3-4.

There is neither a puzzle in these rulings nor an inconsistency in the agency's analysis. A Contender pistol, when sold *by itself* without a rifle stock, is not a short-barrel rifle. A Contender rifle, when sold *by itself* without a short barrel, is not a short-barrel rifle. But a Contender pistol, when sold or held with a conversion kit that permits the pistol to be assembled as a short-barrel rifle in less than five minutes (see note 3, *supra*), *is* subject to regulation because it contains all the components of a short-barrel rifle in user-ready form. See *United States* v. *Drasen*, 845 F.2d 731, 736-737 (7th Cir.), cert. denied, 488 U.S. 909 (1988). See also *United States* v. *Endicott*, 803 F.2d at 508; *United States* v. *Luce*, 726 F.2d at

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ment' of the Internal Revenue Code. 26 U.S.C. § 7805 (a)." *United States* v. *Correll*, 389 U.S., at 307. That delegation helps ensure that in "this area of limitless factual variations," *ibid.*, like cases will be treated alike. It also helps guarantee that the rules will be written by "masters of the subject," *United States* v. *Moore*, 95 U.S. 760, 763 (1878), who will be responsible for putting the rules into effect.

National Muffler Dealers Ass'n v. *United States*, 440 U.S. at 477. In 1972, responsibility for administering and enforcing the provisions of the National Firearms Act was delegated within the Treasury Department to BATF. See 37 Fed. Reg. 11,896 (1972).

48-49; *United States* v. *Woods*, 560 F.2d at 665. The agency's rulings have consistently drawn and applied this very distinction for more than 30 years. See Rev. Rul. 61-45, *supra*; Rev. Rul. 61-203, *supra*. Because this consistent administrative interpretation reasonably implements the statute, it should be followed in this case. See *CFTC* v. *Schor*, 478 U.S. 833, 844 (1986); *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-845 (1984).

C. Other Provisions Of The National Firearms Act Are Consistent With And Do Not Alter This Conclusion

The court of appeals erred in concluding that the "common sense interpretation" (*United States* v. *Luce*, 726 F.2d at 49) that the other courts of appeals have reached—to include partially unassembled, but complete, weapons kits within the definition of "firearms" under the Act—would render other parts of the Act "either awkward or superfluous" (Pet. App. 6a).

1. The Act defines a "rifle" to "*include* any such weapon which may be readily restored to fire a fixed cartridge." 26 U.S.C. 5845(c) (emphasis added). The court of appeals reasoned that, if a firearm were deemed "made" without complete assembly, the additional statutory coverage of firearms that "may be readily restored" to use would then be superfluous (Pet. App. 6a-7a).

That reasoning is erroneous. A complete but partially unassembled weapon, such as the Contender with its conversion kit, is a "rifle" because, when fully assembled with the shoulder stock, it falls squarely within the definition of a rifle. A weapon that once was a rifle, but which now lacks some

essential component—such as a firing pin—is "*include*[*d*]" within the statutory definition of a "rifle" if it "may be readily restored" to use (26 U.S.C. 5845(c) (emphasis added)).[16] See *United States* v. *Smith*, 477 F.2d 399 (8th Cir. 1973) (per curiam) (even though the barrel was welded shut, it could be "readily restored" to use in eight hours); *United States* v. *Catanzaro*, 368 F. Supp. 450, 452 n.3, 453 (D. Conn. 1973) (weapon could be "readily restored" to use in approximately one hour).

The statutory inclusion of incomplete or non-functioning firearms that can be "readily restored" to use *supports* the conclusion that the statute also applies to complete, but partially unassembled, firearms kits. There is no reason to suppose that Congress would have intended to "include" weapons that require hours of reassembly within the definition of a "rifle" but exclude weapons that require "only a brief and minimal effort * * * to assemble" from the manufacturer's kit. *United States v. Endicott*, 803 F.2d at 508. As the Seventh Circuit concluded in rejecting this same argument, a "rifle that has been disas-

[16] In adding the "readily restored" language to the statute, "Congress specifically intended to overcome *United States* v. *Thompson*, 202 F. Supp. 503 (N.D. Cal. 1962), holding that a firearm with a missing firing pin was not a firearm under the Act." *United States* v. *Drasen*, 845 F.2d at 736 (citing S. Rep. No. 1501, 90th Cong., 2d Sess. 46 (1968)). The Senate Report states that the amendment was intended merely to "clarif[y]" the definition of the term "rifle" and was "consistent with the administrative construction of existing law." S. Rep. No. 1501, *supra*, at 46. The "administrative construction" of the statute to which the Senate Report refers included the Treasury Rulings that a short-barrel pistol held in conjunction with an attachable shoulder stock constitutes a short-barrel rifle under the Act. See Rev. Rul. 61-45, *supra*; Rev. Rul. 61-203, *supra*.

sembled for some reason is clearly in the same category as an identical collection of rifle parts that has not yet been assembled. The statute covers both." *United States* v. *Drasen*, 845 F.2d at 736.

2. In 1968, Congress amended the definition of "machinegun" in Section 5845(b) of the National Firearms Act to "include" the receiver of a machinegun by itself and any "combination of parts" from which a machinegun can be made or that can be used to convert another weapon into a machinegun. Gun Control Act of 1968, Pub. L. No. 90-618, § 201, 82 Stat. 1231. The court of appeals concluded (Pet. App. 12a-14a) that, by specifically including a "combination of parts" from which a machinegun can be assembled within the statutory definition of "machinegun" in 1968, Congress necessarily intended to *exclude* a "combination of parts" from which a short-barrel rifle can be assembled from the statutory definition of "rifle" under the Act.[17]

[17] The court also appeared to believe (Pet. App. 14a) that, since the statute expressly regulated a "combination of parts" for use in *converting* a non-regulated weapon into a "machinegun" or a "destructive device" (see 26 U.S.C. 5845(b) and (f)), it should not be read impliedly to regulate a "combination of parts" to convert a pistol into a short-barrel rifle (see 26 U.S.C. 5845(a)(3)). The question whether a "conversion kit" for converting a pistol into a short-barrel rifle is, by itself, subject to regulation is not presented in this case. Instead, this case presents the question whether the "conversion kit" *when possessed or distributed together with the pistol*—in a unit that constitutes a complete, partially unassembled short-barrel rifle—is regulated as a firearm under the Act. As the Seventh Circuit stated in *United States* v. *Drasen*, 845 F.2d at 737, "[w]e are concerned [in this case] only with complete parts kits for short-barrel rifles." With respect to a complete parts kit, the courts of appeals consistently have held heretofore that "[the statute] does not specify that the

The court of appeals' reasoning is based on a serious misreading of history. The Gun Control Act of 1968 was enacted in the wake of the assassinations of Martin Luther King, Jr. and Robert F. Kennedy. The Act represented a strong and swift political reaction to those events. The objective of the 1968 legislation was quite clearly to broaden, rather than narrow, the provisions of the National Firearms Act. The legislative findings in support of the Gun Control Act of 1968 recited:

> Handguns, rifles and shotguns have been the chosen means to execute three-quarters of a million people in the United States since 1900. The use of firearms in violent crimes continues to increase today. * * * No civilized society can ignore the malignancy which this senseless slaughter reflects.

H.R. Rep. No. 1577, 90th Cong., 2d Sess. 7 (1968). Congress noted its specific concern over the role played by rifles and shotguns in this "senseless slaughter" (*id.* at 8):

> Of the 6,500 firearms murders in the United States each year, 30 percent, or over 2,000, are committed with rifles or shotguns. * * * President Kennedy, Martin Luther King, Jr., Medgar Evers, and the 16 dead and 31 wounded victims of a deranged man firing from the tower of the University of Texas were all shot by rifles or shotguns.

It was against this background that Congress enacted the Gun Control Act of 1968 to "aid in curbing the

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parts must be assembled before [the statute] applies." *United States* v. *Woods*, 560 F.2d at 665. See also *United States* v. *Kokin*, 365 F.2d at 596.

problem of gun abuse that exists in the United States." S. Rep. No. 1501, 90th Cong., 2d Sess. 23 (1968). Congress succinctly described the revisions it enacted to the National Firearms Act of 1968 as "strengthening and clarifying amendments." *Id.* at 26.

One of the "strengthening and clarifying amendments" enacted in 1968 was the expansive definition of "machinegun" added in Section 5845(b) of the Act. This amendment codified the rationale of the decision in *United States* v. *Kokin*, 365 F.2d at 596, which previously had held that a complete parts kit that could be used to make a machinegun was subject to regulation under the National Firearms Act (*ibid.*). The amendment also went much further, however, and specified that a single part, such as a "receiver" or "frame" of a machinegun, or any part designed for converting a weapon into a machinegun, is subject to regulation under the Act. See 26 U.S.C. 5845(b); S. Rep. No. 1501, *supra*, at 45-46. See also note 17, *supra*.

It distorts history as well as logic to suggest that, by expanding the scope of the National Firearms Act and enlarging the scope of regulation for machineguns to "include" certain individual gun parts *as well as* conversion kits *and* complete parts kits used to make a "machinegun," [18] Congress meant to nar-

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[18] Congress evidently perceived "machineguns" to be so inherently dangerous that single constituent parts were made subject to regulation under the Act. As the Seventh Circuit stated in *United States* v. *Drasen*, 845 F.2d at 737:

> Parts for [weapons such as machine guns], which are regulated without limitation, are therefore parts with only one purpose, so that a single part could reasonably be subject to regulation.

row the definition of other sections of the Act to *exclude* from regulation an unassembled but complete parts kit that can be used to make a short-barrel "rifle." As all of the courts of appeals that had considered this question had correctly concluded prior to the decision in this case, the 1968 amendments to the National Firearms Act did not alter the "common sense" result that a complete parts kit that can be assembled in the form of a regulated weapon is subject to the Act. See *United States* v. *Drasen*, 845 F.2d at 737; *United States* v. *Luce*, 726 F.2d at 49 ("Congress clearly intended this common sense interpretation"); *United States* v. *Woods*, 560 F.2d at 665 (the statute "does not specify that the parts must be assembled before it applies"); *United States* v. *Endicott*, 803 F.2d at 509. See also Pet. App. 31a. As the court of appeals stated in *United States* v. *Woods*, "to reason otherwise would be to frustrate or defeat the very purpose of the statute." 560 F.2d at 665.

This conclusion is supported by history as well as by common sense. No one who lived through the events of that year could seriously contend that the Gun Control Act of 1968 was enacted "to frustrate or defeat" the regulation of short-barrel rifles and shotguns or in any other manner to *narrow* the preexisting, judicial or administrative construction of the National Firearms Act.[19] Cf. *Chisom* v. *Roemer*, 111 S.

[19] Indeed, one of the specific objectives of the 1968 amendments to the National Firearms Act was to alter the result in *Haynes* v. *United States*, 390 U.S. 85 (1968), which held that, under the Act as it then existed, the privilege against compelled self-incrimination would provide "a full defense to prosecutions either for failure to register a firearm * * * or for possession of an unregistered firearm" (*id.* at 100). Congress amended Section 5848 of the National Firearms Act to avoid this result by prohibiting the use of registration information against the person filing it "as evidence * * * in a criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing" of that information 26 U.S.C. 5848(a). See S. Rep. No. 1501, *supra*, at 26.

Ct. 2354, 2368 (1991) ("It is difficult to believe that Congress, in an express effort to broaden the protection afforded by the Voting Rights Act, withdrew, without comment, an important category of elections from that protection.").

Eighteen years after the Gun Control Act of 1968, Congress again amended the National Firearms Act, this time specifically to provide that the term "silencer" includes a "combination of parts" from which a silencer can be assembled. See 26 U.S.C. 5845(a)(7), 18 U.S.C. 921(a)(24). In expressly adding the "combination of parts" language to the definition of the term "silencer," Congress *explicitly* recognized that "complete kits" for firearm silencers *already were regulated* under the Act without that additional statutory language. See H.R. Rep. No. 495, 99th Cong., 2d Sess. 21 (1986). The stated purpose for the amendment to include a "combinations of parts" in the definition of "silencer" was "*to control the sale of incomplete silencer kits that now circumvent the prohibition on selling complete kits.*"[20] *Ibid.* (emphasis added).

[20] Consistent with the description of pre-1986 law set forth in the House Report, Edward Owen, Chief, Firearms Technology Branch of the BATF, testified in hearings held prior to the statutory amendments specifically defining the term firearm "silencer" to include silencer parts or combinations of silencer parts, that the BATF treated a "kit that [i]s complete enough to assemble a suppressor * * * in the same fashion as a functional device," and, hence, that a complete silencer "kit" was itself "a silencer subject to registration" under then-existing law. *Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers: Hear-*

Congress thus recognized, as the other courts of appeals consistently have held, that a "complete parts kit" (*United States* v. *Drasen*, 845 F.2d at 737) was subject to regulation under the Act even before the phrase "combination of parts" was added to bring "incomplete [parts] kits" for certain firearms also within the Act's coverage. See, *e.g.*, *United States* v. *Endicott*, 803 F.2d at 508 (a complete parts kit is regulated "if only a brief and a minimal effort is required to assemble the complete design by reason of the nature and location of the parts"); *United States* v. *Lauchli*, 371 F.2d at 311-313; *United States* v. *Kokin*, 365 F.2d at 596 (before the "combination of parts" language was added to the statutory definition of "machineguns," an unregulated carbine "together with all the parts necessary to convert it into * * * [a machine gun]" constituted a regulated "machinegun" under the Act). Prior to the decision in this case, the courts of appeals had uniformly held that a complete, but partially unassembled, weapon constitutes a "firearm" under the Act. See, *e.g.*, *United States* v. *Drasen*, 845 F.2d at 736-737; *United States* v. *Endicott*, 803 F.2d at 508; *United States* v. *Woods*, 560 F.2d at 665 (the statute "does not specify that the parts must be assembled before it applies"). They had thus consistently rejected the claim that "the statute did not cover unassembled rifles." *United States* v. *Drasen*, 845 F.2d at 735, 736-737 ("[c]ommon sense permits no other conclusion").

3. The decision of the court of appeals poses a serious threat to civil and criminal enforcement of

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ings on H.R. 641 and Related Bills Before the Subcomm. on Crime of the House Comm. on the Judiciary, 97th Cong., 2d Sess. 122, 132 (1984). See also *United States* v. *Luce*, *supra*; *United States* v. *Endicott*, *supra*.

the National Firearms Act. While the court of appeals apparently believed that this case merely presented the question of *who* pays the excise tax (the manufacturer or the purchaser who assembles the firearm) (Pet. 4a), the opinion drastically diminishes the breadth of the statute by requiring that a firearm be fully assembled to be subject to regulation (Pet. App. 5a). Since the same statutory definitions apply equally to the civil and criminal enforcement sections of the Act, the court of appeals' approach would enable defendants to claim that the government must now prove that the complete, but partially unassembled, weapon found in their possession had once been fully assembled in the form of a regulated firearm.[21] Manufacturers and importers of regulated firearms could also seek to circumvent the Act in like manner.[22]

In reaching its conclusion that a complete parts kit —which takes less than five minutes to assemble into a short-barrel rifle—is not a "firearm" under the Act, the court of appeals ignored this Court's admonition that the language of a statute should "not be distorted under the guise of construction, or so limited by construction as to defeat the manifest

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[21] As the cases cited in this brief reflect, prosecutions under the National Firearms Act often involve weapons that are recovered in a partially unassembled state. See *United States* v. *Drasen*, 845 F.2d at 736-737; *United States* v. *Endicott*, 803 F.2d at 508; *United States* v. *Luce*, 726 F.2d at 49; *United States* v. *Woods*, 560 F.2d at 665; *United States* v. *Kokin*, 365 F.2d at 596.

[22] The National Firearms Act prohibits the importation of regulated firearms for commercial sales. Importation is restricted to use for governmental agencies and scientific or research purposes. 26 U.S.C. 5844.

intent of Congress." *United States* v. *Alpers*, 338 U.S. 680, 681-682 (1950). While the Thompson short-barrel rifle is not itself a weapon of mass destruction, it would be simple enough to drive an Uzi through the eye of the Federal Circuit's needle. Congress never intended to allow a loophole in its regulatory structure that would be large enough for provisioning an army. See *United States* v. *Drasen*, 845 F.2d at 736.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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NOVEMBER 1991

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 312324 45162